

## Chapter PD 4

### PRIVATE ATTORNEY PAYMENT

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**Note:** Chapter SPD 4 was renumbered chapter PD 4 under s. 13.93 (2m) (b) 1., Stats., Register, July, 1995, No. 475.

**PD 4.01 Billing form.** At the time a private attorney is assigned a case by the state public defender pursuant to s. PD 2.03, the state public defender shall furnish the attorney with a billing form to be submitted when the case is concluded. The form shall include an itemized listing of the service provided and the expenses incurred.

**History:** Cr. Register, August, 1978, No. 272, eff. 9-1-78; correction made under s. 13.93 (2m) (b) 7., Stats., Register, July, 1995, No. 475.

**PD 4.02 Submission of bill.** Within 6 months of the conclusion of the case, the private attorney shall submit the billing form to the local office of the state public defender. The state public defender shall promptly review the bill to insure that attorney time billed reflects reasonable attorney practice in such a case, as determined by the state public defender, and, except as provided for in s. PD 4.06, promptly authorize payment at the rate established under s. 977.08 (4m), Stats. The “conclusion of the case” means the conclusion of trial-level representation for trial cases and the conclusion of appellate-level representation for appellate cases. If the bill is not submitted within 6 months of the conclusion of the case, the state public defender is not required to pay the bill promptly.

**History:** Cr. Register, August, 1978, No. 272, eff. 9-1-78; am. Register, November, 1984, No. 347, eff. 12-1-84; am. Register, April, 1990, No. 412, eff. 5-1-90; emerg. am. eff. 6-14-95; am. Register, October, 1995, No. 478, eff. 11-1-95.

**PD 4.025 Compensation for public representation after case commenced by retained counsel.** (1) Except as provided in sub. (3), if privately retained counsel is appointed by the state public defender under s. PD 2.07 (1), the total amount reimbursed by the state public defender to that attorney may not exceed an amount equal to the total number of hours shown by contemporaneous time records to have been reasonably expended on the case by that attorney multiplied by the rate the state public defender is authorized by statute to pay private attorneys, less any fees paid to the attorney by or on behalf of the client. The attorney’s expenses are not included in the computation of the maximum amount reimbursable by the state public defender.

(2) (a) Fees, if any, paid by or on behalf of the client shall first be applied to the period of legal representation prior to the effective date of assignment by the state public defender, using the number of hours shown by contemporaneous time records to have been reasonably expended on the case by that attorney during that period multiplied by the rate the state public defender is authorized by statute to pay private attorneys.

(b) Any fees received by the attorney from or on behalf of the client in excess of the amount calculated under par. (a) shall be applied to the period of representation after the effective date of assignment by the state public defender and subtracted from the total amount reimbursable by the state public defender under sub. (1).

(3) The state public defender may, in his or her discretion, use a reasonable hourly rate that is greater than the amount authorized by statute to compute the allowable fees calculated under sub. (2) (a) for the period of representation prior to assignment by the state public defender, if all of the following apply:

(a) The privately retained attorney had a written fee agreement which was signed by the client at the beginning of the attorney’s representation;

(b) The attorney had a reasonable expectation of being paid fully for representation of the client at the beginning of the representation, and that expectation is supported by the written fee agreement;

(c) The attorney maintained contemporaneous time records for all time expended in the representation of the client; and

(d) The state public defender finds that the fee paid to the attorney by or on behalf of the client prior to the appointment of publicly compensated counsel was reasonable.

(4) The amount reimbursed by the state public defender may not exceed the amount computed by multiplying the rate the state public defender is authorized by statute to pay times the number of hours actually expended by the attorney in this representation after the effective date of assignment by the state public defender.

**Note:** The state public defender board presumes access to the attorney’s contemporaneous time records of the case as necessary to implement s. PD 4.025.

**History:** Cr. Register, April, 1990, No. 412, eff. 5-1-90; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, July, 1995, No. 475.

**PD 4.03 Appeal.** (1) Any attorney may appeal the state public defender’s reduction or denial of any submitted bill. An appeal shall conform with all of the following:

(a) Notice of the appeal is in writing;

(b) Notice is submitted within 30 days of the receipt of the reduced or denied payment; and

(c) Delivery of the notice is by mail or in person.

(2) Failure to submit an appeal notice within 30 days shall bar the appeal.

(3) During the pendency of the appeal the attorney may negotiate the check for the reduced or denied payment without waiver of the right to appeal.

(4) Upon receipt of an appeal letter, the state public defender shall place the matter on the agenda of the next state public defender board meeting unless that meeting is less than 10 days from the receipt of the appeal letter, in which case the matter may be scheduled for the following meeting. The state public defender shall, at least 10 days prior to hearing, inform the attorney of the time and place of the board meeting at which the appeal will be considered.

(5) The attorney may request that the state public defender reproduce and submit to the board material relevant to the appeal. The hearing before the board shall be considered a “class 3” proceeding and is governed by ss. 227.44 to 227.46, Stats.

(6) The state public defender board may deliberate the matter in executive session pursuant to the provisions of s. 19.85 (1) (a), Stats. The board shall issue a written decision either affirming or modifying the decision of the state public defender. The written decision shall be mailed to the attorney within 20 days of the board meeting and shall be signed by an officer of the board.

(7) The board’s written decision shall constitute findings of fact and conclusions of law within the meaning of s. 227.10, Stats.

(8) In the event the board increases the amount to be paid to the attorney, the state public defender shall immediately authorize

payment and request that the state treasurer issue the payment as soon as possible.

**History:** Cr. Register, August, 1978, No. 272, eff. 9-1-78; am. (2), (3), (4) and (6), Register, November, 1984, No. 347, eff. 12-1-84; am. (1), renum. (2) to (6) to be (4) to (8), cr. (2) and (3), Register April, 1990, No. 412, eff. 5-1-90; correction in (5) and (7) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1990, No. 412; emerg. am. (1) (intro.) and (b), eff. 6-14-95; am. (1) (intro.) (b) and (3), Register, October, 1995, No. 478, eff. 11-1-95.

**PD 4.04 Attorney compensation from client prohibited.** An attorney representing clients for the state public defender program may not solicit, attempt to solicit, or receive compensation from the attorney's client in addition to any compensation which the attorney has received or expects to receive from the state public defender pursuant to this chapter.

**History:** Cr. Register, November, 1984, No. 347, eff. 12-1-84.

**PD 4.05 Private bar emergency rate reduction.**

(1) The state public defender board may reduce the payment rates under s. 977.08 (4m), Stats., by not more than \$2 per hour, for either or both of the following:

- (a) For time spent in-court.
- (b) For time spent out-of-court, excluding travel.

(2) The board may not reduce payment rates unless, after reasonable notice and an opportunity for hearing, the board determines that:

- (a) A quarterly report prepared pursuant to s. 977.085, Stats., projects that money appropriated to s. 20.550 (1) (d), Stats., will be depleted prior to the end of the current fiscal year or biennium;
- (b) A reduction in payment rates would substantially reduce the projected deficit during the current fiscal year or biennium; and

(c) A reduction in payment rates would not significantly decrease the availability of private attorneys to represent indigent clients under s. 977.08, Stats.

(3) The board may consider other factors, in addition to the prerequisites set forth in sub. (2), in determining whether a rate reduction is appropriate.

(4) The reduction in rates under sub. (1) shall apply only to cases assigned after notice of the board's action is provided to private attorneys who are listed under s. 977.08 (3), Stats.

(5) If the board orders a reduction in rates, it shall review the need for a continuing reduction at least once every 2 months after the date of the reduction.

(6) Upon review, the board may, in its discretion, terminate the reduction in rates.

(7) Upon review, the board must terminate the reduction in rates if it is determined that funds under s. 20.550 (1) (d), Stats., will not be depleted before the end of the fiscal year or biennium.

**History:** Cr. Register, April, 1990, No. 412, eff. 5-1-90.

**PD 4.06 Annual attorney hours.** (1) Beginning in calendar year 1995, the state public defender may only reimburse a private attorney for 2080 hours worked in a single calendar year. This rule applies regardless of the year in which the bill for legal services is presented.

(2) An attorney who predicts, based on current and foreseeable workload, that exceptional circumstances will cause his or her billable hours in any calendar year to exceed 2080, may seek advance approval from the state public defender board for payment of additional hours. An application for advance approval must be made in writing, and must include an itemization of hours billed in the calendar year, an itemization of hours worked on pending cases, and the exceptional circumstances justifying payment for excess hours.

(3) An attorney who is denied payment for hours worked under sub. (1) may appeal to the state public defender board, pursuant to the procedures set forth in s. PD 4.03, for a review of the denial of payment. Such appeal must include documentation of the exceptional circumstance justifying payment.

**History:** Emerg. cr. 4.06 eff. 6-14-95; cr. Register, October, 1995, No. 478, eff. 11-1-95.